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CHAPTER Clients Rights	SUBCHAPTER Investigation Procedures	EFFECTIVE DATE 3-1-06	NUMBER OF PAGES 10	PAGE NUMBER 1 of 9
SUBJECT Abuse and Neglect Definitions, Investigation Procedures and Penalties, State Operated Facilities		AUTHORITY Sections 630.050		HISTORY SEE BELOW
PERSON RESPONSIBLE General Counsel			Sunset Date 7-1-09	

**Purpose:** Prescribes procedures for reporting, investigating and processing reports and complaints of abuse, neglect and misuse of funds/property of Department of Mental Health (department) consumers in state operated department facilities.

**Application:** Applies to department employees.

(1) As used in this DOR, the following terms shall mean:

(A) "Class I neglect," failure of an employee to provide reasonable or necessary services to maintain the physical and mental health of any consumer when that failure presents either imminent danger to the health, safety or welfare of a consumer, or a substantial probability that death or physical injury would result.

(B) "Class II neglect," failure of an employee to provide reasonable or necessary services to a consumer according to the individualized treatment or habilitation plan, if feasible, or according to acceptable standards of care. This includes action or behavior which may cause psychological harm to a consumer due to intimidating, causing fear or otherwise creating undue anxiety.

(C) "Complainant," any person who files a complaint.

(D) "Complaint," allegation that class I neglect, class II neglect, misuse of funds/property, physical abuse, sexual abuse, or verbal abuse has occurred.

(E) "Consumer," individual receiving services from any facility operated by the department, and may also be referred to as client, resident or patient.

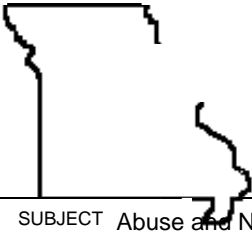
(F) "Incident and Investigation Tracking System (iiTS)," the automated database maintained by the department to collect and analyze data related to events that have actual or potential adverse outcomes for consumers.

(G) "Incident and Investigation Tracking System (iiTS) form," department approved form to collect relevant data on events that have actual or potential adverse outcomes for consumers.

(H) "Inquiry," process of gathering facts surrounding an event, complaint or upon discovery of unknown injury to determine whether the incident or event is suspect for abuse or neglect.

(I) Medications

1. "Medication Error", a mistake in prescribing, dispensing, or administering medications. A medication error occurs if a consumer receives an incorrect drug, drug dose, dosage form, quantity, route, concentration, or rate of administration. This includes failing to administer the drug or administering the drug on an incorrect schedule. Levels of medication errors are:



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A. "Minimal medication error" is one in which the consumer experiences no or minimal adverse consequences and receives no treatment or intervention other than monitoring or observation;

B. "Moderate medication error" is one in which the consumer experiences short-term reversible adverse consequences and receives treatment and or intervention in addition to monitoring or observation; and

C. "Serious medication error" is one in which the consumer experiences life-threatening and/or permanent adverse consequences or results in hospitalization.

2. Serious medication errors shall be investigated by the investigations unit as possible abuse or neglect.

(J) "Misuse of funds/property," the misappropriation or conversion for any purpose of a consumer's funds or property by an employee or employees with or without the consent of the consumer.

(K) "Physical abuse,"

1. An employee purposefully beating, striking, wounding or injuring any consumer;

2. In any manner whatsoever, an employee mistreating or maltreating a consumer in a brutal or inhumane manner. Physical abuse includes handling a consumer with any more force than is reasonable for a consumer's proper control, treatment or management.

(L) "Sexual abuse," any touching, directly or through clothing by an employee of a consumer for sexual purpose or in a sexual manner. This includes but is not limited to:

1. Kissing;

2. Touching of the genitals, buttocks or breasts;

3. Causing a consumer to touch the employee for sexual purposes;

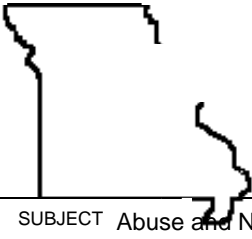
4. Promoting or observing for sexual purpose any activity or performance involving consumers including any play, motion picture, photography, dance, or other visual or written representation;

5. Failing to intervene or not attempting to stop inappropriate sexual activity or performance between consumers; and/or

6. Encouraging inappropriate sexual activity or performance between consumers.

(M) "Report of physical, sexual or verbal abuse, neglect or misuse of funds/property," an allegation of physical, sexual or verbal abuse, neglect or misuse of funds/property that is based upon reasonable cause to believe that the allegation has occurred.

(N) "Verbal abuse," an employee using profanity or speaking in a demeaning, non-therapeutic, undignified, threatening or derogatory manner to a consumer or about a consumer in the presence of a consumer.



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(2) The department director delegates authority to heads of the facilities to perform duties and take appropriate action to ensure consumers reside in safe and therapeutic environments, subject to the supervision of the division director or department director. The heads of facilities or designees, upon receipt of any complaint or discovery of unknown injury, shall conduct an inquiry if necessary to determine whether there is reasonable cause to believe that any prohibited conduct as set forth herein has occurred.

(A) The heads of facilities or designees shall refer all reports of physical, sexual or verbal abuse, neglect or misuse of funds/property to the Office of the General Counsel on the department approved form for initiating an investigation. Medication related events are reportable under this subsection if they are serious medication errors.

(B) The investigations unit under the Office of the General Counsel shall investigate and process all reports of physical, sexual or verbal abuse, neglect, misuse of funds/property, or serious medication errors or instances involving diversion of medication. Upon receipt of a report from the head of a facility, or designee, the investigations unit shall assign an investigator immediately. The assigned investigator shall initiate contact with the facility within twenty-four (24) hours to arrange for securing evidence and such other activities as may be necessary. The heads of facilities or designees shall identify a contact person at each facility to assist in these tasks.

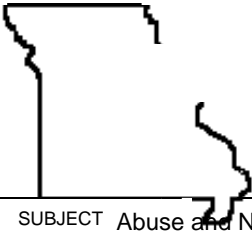
(C) The Office of the General Counsel is granted the authority to set criteria for the commencement of field-work investigations based upon the nature of the report. The criteria shall be incorporated into the policies of the investigations unit and provided to heads of the facilities.

(3) Complaints shall be immediately reported to the head of the facility by any person including department employees, contract employees, or any other mandatory reporter as set out in section 630.165, RSMo, who knows through direct or indirect means that misconduct defined herein has occurred, or suspects such has occurred or receives a complaint. Persons identified herein who fail to report complaints of known or suspected incidents of misconduct as defined herein are subject to discipline, criminal prosecution or both.

(4) The head of the facility or designee shall record on the department incident and investigation tracking (iITS) form all complaints and reports.

(A) The head of the facility or designee shall ensure that the form is thoroughly and accurately completed. All complaints and reports shall be entered into the iITS database as inquiries by the head of the facility or designee within twenty-four (24) hours of the incident, or by the end of the next working day after the incident occurred, was discovered, or notification of the incident was received.

(B) All complaints and reports involving suspected physical, sexual or verbal abuse, neglect or misuse of funds/property shall be referred immediately for investigation to the investigations unit in accordance with subsection (2)(A) of this DOR. The head of the facility or designee shall promptly send the department-approved form for initiating an investigation to the Office of General Counsel.



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(5) The head of the facility shall immediately report to:

(A) The Children's Division - Child Abuse/Neglect Hotline any complaints if the alleged victim is under the age of eighteen (18).

(B) Local law enforcement official any alleged or suspected:

1. Sexual abuse, or;
2. Abuse, neglect or misuse of funds/property if the head of the facility has cause to believe that criminal misconduct is involved, or;
3. Abuse or neglect which results in physical injury.

(C) The Department of Health and Senior Services, Division of Senior Services and Regulation -Elderly Abuse/Neglect Hotline any alleged or suspected abuse or neglect involving a consumer when that consumer is away from the facility with a family member, guardian or other person and that consumer is sixty years of age or older or a covered adult as defined in section 660.250, RSMo.

(D) Copies of all notifications required by this section shall be provided to the assigned investigator if an investigation is initiated.

(6) After receiving a complaint or report, the facility head or designee shall ensure the following requirements are completed:

(A) In all cases of physical abuse or neglect resulting in injury, a physical examination of the consumer shall be performed by a qualified medical professional as soon as practicable. If there is reasonable cause to believe that sexual abuse has occurred, and it includes penetration, the examination shall be performed immediately by a medical professional at the facility qualified in the "rape kit" examination. If no qualified personnel are available at the facility, then the consumer shall be transported to a medical facility where an independent medical professional qualified in "rape kit" examination shall perform the medical examination. The examination shall take place with the consent of the consumer or the legal guardian. In those cases where medical examination or intervention is necessary due to a serious life-threatening injury and the consumer is unable to provide consent or the guardian is unavailable, the medical examination or intervention may be performed without consent.

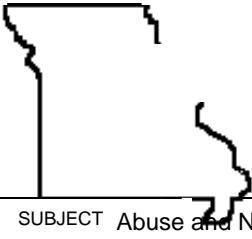
(B) Immediately notify by telephone, if possible, the parents of a minor consumer or the consumer's legal guardian of:

(1) the nature of the injuries and the facts and circumstances surrounding the incident as they are then known, except the names of employees or other consumers shall not be disclosed,

(2) the actions that have been taken or that are planned regarding the care of the consumer;

(3) the inquiry or investigation into the matter.

(C) The verbal notification to the parents or guardian shall be documented, which shall include the name of the person contacted, relationship to the consumer, brief description of the information communicated and received along with the date and time of the contact. In those cases in which a report is forwarded for investigations,



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this contact documentation shall be provided to the investigator assigned to the matter.

(D) As soon as practicable following the phone contact, provide written notification to the parents or legal guardian of the information provided in subsection (B) above, along with the current status of the matter. This correspondence shall also be provided to the assigned investigator.

(E) Take color photographs of all injuries and secure any evidence involved in the incident. Any area where an incident has occurred in which it is believed potential evidence may exist shall not be disturbed. The area shall not be disturbed until after review by authorized personnel such as the assigned investigator, law enforcement officials, or medical or emergency personnel, and only with the approval of the head of the facility or designee in consultation with the assigned investigator.

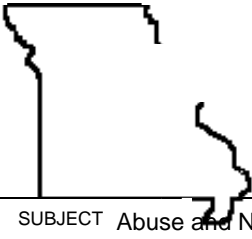
(F) Within five (5) working days after receiving the complaint, notice shall be sent by regular mail to the complainant acknowledging receipt of the complaint. The notice shall specify whether an investigation or inquiry has been initiated. Copies of the complainant notification shall be provided to the assigned investigator if an investigation is initiated. Notification shall be made as follows:

1. If the complainant is a minor, the notice shall be sent to the minor's parent(s) or guardian.
2. If the complainant has been adjudged incapacitated and has a guardian appointed pursuant to Chapter 475, RSMo, the notice shall be sent to the guardian.
3. If the complainant does not have a guardian, the notice shall be sent directly to the complainant. Notification is not required to be sent to a department employee who initiates a complaint.

(7) Facility employees shall cooperate fully with law enforcement and department or other state investigators authorized to investigate the matter. Failure to cooperate in the investigation may result in discipline up to and including dismissal. State employees shall forfeit their positions as set out in section 36.410, RSMo, if they willfully refuse or fail to appear, or having appeared, refuse to testify or answer questions before the investigator, or to the head of the facility or designee during an inquiry or investigation.

(8) Pending completion of the inquiry or investigation of the incident, the head of the facility may place the employee accused of any prohibited conduct as set forth herein on administrative leave with pay or assign the person to work in an area away from consumer contact, if such is available.

(9) The assigned investigator shall complete the investigative report within thirty (30) working days of the assignment of the investigation unless the facility is certified as an intermediate care facility for the mentally retarded (ICF-MR). Investigative reports concerning ICF-MR consumers shall be completed in five (5) working days following the receipt of the report by the investigations unit.



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(A) If an investigative report cannot be completed within the time provided in section (9) above, a preliminary report shall be completed by the assigned investigator along with notice of additional time needed to complete the report. The preliminary report and notice of additional time shall be completed on the department approved form and sent to the head of the facility.

(B) Extensions of time shall not be routinely made but may be allowed due to conditions outside of the control of the investigator, such as awaiting an autopsy report, awaiting other outside records or other extenuating circumstances. The preliminary report shall contain a brief statement of the findings acquired during the period of the preliminary investigation, the reason for the need for additional time and proposed completion date.

(10) After receiving the final investigative report, the facility head or designee shall within ten (10) working days decide upon appropriate disposition of the matter or request further investigation.

(A) If the facility head or designee requests further investigation, an additional ten (10) working days may be allowed to complete the report, unless the facility head or designee allows more time.

(B) If the complaint is unsubstantiated, the facility head or designee shall enter the determination into iITS within one (1) working day of the decision and immediately submit a copy to the Office of the General Counsel.

(C) If the complaint is substantiated, the facility head shall take the following actions.

1. Dismiss any employee in accordance with Section 36.380, RSMo, with substantiated charge(s) of physical abuse; sexual abuse; class I neglect; misuse of funds/property; two (2) counts of verbal abuse, or two (2) counts of class II neglect, or one (1) count of verbal abuse and one (1) count of class II neglect, within a twelve (12) month period. The employee shall be offered the appropriate appeal process as specified in (12) or (13).

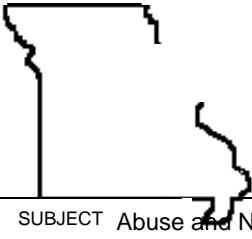
2. Appropriately discipline, according to DOR 6.050, any employee with a substantiated charge of class II neglect or verbal abuse.

3. The employee shall be notified in written summary of the finding and handed the letter in person if at all possible. The date of the letter should be when the employee is given the letter. When it is not practicable to give the summary to an employee in person, it may be sent to the employee by certified or registered mail, return receipt requested.

4. The letter provided to the employee shall contain:

A. A summary of the action of the employee resulting in the determination;

B. A definition of the substantiated charge(s) from section (1);



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C. Information listing the specific substantiated charges that disqualify an individual from employment as specified in (10)(C)1;

D. Information regarding the Personnel Advisory Board appeals right as specified in (12) if applicable;

E. An offer for the employee to meet with the facility head to submit comments or present evidence.

5. The meeting with the facility head must take place within ten (10) calendar days of the date of the letter, unless the parties mutually agree on an extension.

(11) Within ten (10) calendar days of the meeting, or if no meeting was requested, the head of the facility or designee shall make a final determination. The employee shall be provided written notice of this determination in person or by certified mail. If the charge is substantiated and is a charge listed in (10)(C)1 and the employee does not have Personnel Advisory Board appeal rights as specified in (13), the letter shall inform the employee they have ten (10) working days following the receipt of the letter to appeal the decision to the department hearings administrator or designee.

(A) The head of the facility or designee shall enter the final determination into iITS whether the complaint is substantiated or unsubstantiated within one (1) working day of the decision.

(B) If the complaint is substantiated, the head of the facility or designee shall immediately submit to the Office of the General Counsel a final determination form (MO #650-8808), accompanied by the following documentation:

1. Letters to the employee as required under paragraphs (10)(C)3 and (11) above;

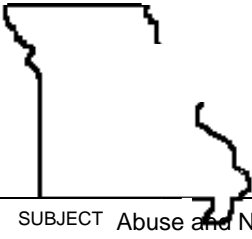
2. Evidence that the employee has received the letters including a signature of the employee attesting to his or her receipt of the letters. This requirement is met by a document signed by department staff that the employee refused to acknowledge receipt of the letters or documentation from the postal authorities indicating their efforts to deliver the letters.

(12) An employee who has attained regular status under the Merit System and is suspended without pay for more than five (5) days, is involuntarily demoted, or is dismissed has rights to appeal the disciplinary action to the Personnel Advisory Board (PAB) within thirty (30) calendar days of the effective date of the disciplinary action.

(A) If the PAB upholds the action or no appeal is filed and the action meets the criteria in paragraph (10)(C)1:

1. The Office of the General Counsel shall place the perpetrator's name on the department's Disqualification Registry.

2. The perpetrator shall not be employed by the department, nor be licensed, employed or provide services by contract or agreement at a residential facility, day program or specialized service that is licensed, certified or funded by the department.



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(13) When the rules of the Personnel Advisory Board do not allow for the appeal of a substantiated charge in (10)(C)1 (employee does not have regular status, e.g. probationary, unclassified and resigned employees), the employee may appeal the substantiated charge(s) to the department hearings administrator or designee.

(A) The employee has ten (10) working days after receipt of the letter in (11) providing them a final determination of substantiated charges of abuse, neglect or misuse of funds/property to appeal the decision to the hearings administrator or designee.

(B) The employee appeals process will be consistent with 9 CSR 10-5.200, sections (7) and (8).

(C) The hearings administrator or designee shall determine whether the appeal is allowed under 9 CSR 10-5.200. If the appeal is allowed, the hearings officer shall:

1. Advise the employee and determiner of the date and time of hearing;
2. Make a decision to uphold, reduce or overturn the substantiated charge(s);
3. Within fourteen (14) working days of the appeal, advise the employee and determiner of his/her decision. Notice of the decision shall be provided to the employee by certified mail.

(D) The hearings administrator's or designee's decision will not affect the resignation of an employee or the termination of a probationary or unclassified employee.

(E) If the hearings administrator or designee upholds the action or no appeal is filed and the action meets the criteria in (10)(C)1, the Office of the General Counsel shall place the employee's name on the department Disqualification Registry.

(F) The employee shall not be employed by the department, nor be licensed, employed or provide services by contract or agreement at a residential facility, day program or specialized service that is licensed, certified or funded by the department.

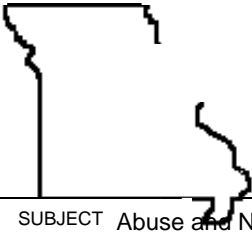
(14) After the investigation is completed, and after the effective date of any disciplinary action, the facility head or designee shall notify: the parent(s) of a minor consumer; or a consumer's legal guardian(s); or a consumer who is their own guardian of the findings of the investigation, a summary of the facts and circumstances and actions taken, except that the names of any employees or other consumers shall not be disclosed. The head of the facility or designee shall maintain a record of this notification.

(15) All plans of action or correction shall be entered into iiTS within ten (10) working days of the determination.

(16) All investigative materials (including final reports) shall be confidential, except as otherwise provided for in this DOR or by statute.

(A) The parents or other guardian of the consumer who is the subject of such report may submit a written request to the department's General Counsel to obtain a copy of the investigative report.





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(B) Requests for release of the investigative report not applicable to section (A) shall be directed to the Office of General Counsel for their review and advice.

(C) The investigative report shall be admissible in any judicial proceeding or hearing in accordance with section 36.390, RSMo, or any administrative hearing before the director of the department or director's designee.

(D) The investigative report shall not be placed in the consumer record.

(17) All investigative materials (including final reports) shall be retained by the investigations unit.

(18) No director, supervisor or employee of a residential facility, day program or specialized service shall evict, harass, dismiss or retaliate against a patient, resident, consumer, or employee because he or she or any member of his or her family has made a report or complaint of any violation or suspected violation of consumer abuse or neglect. Persons committing such retaliation shall be subject to disciplinary action up to and including dismissal.

(19) Persons who are responsible for implementing this DOR, or for assuring its implementation, and fail to do so, may be subject to disciplinary action up to and including dismissal.

*HISTORY: History: DOR 2.205 Original DOR effective May 1, 1983. Amended May 1, 1984. Amended July 1, 1996. Amended May 2, 2002. Amended August 1, 2002. DOR 2.220 Original DOR effective September 1, 1984. Rescinded and replaced by DOR 2.205 August 1, 2002. Amendment effective December 30, 2003. Emergency Amendment effective September 16, 2005. Amended March 1, 2006.*

#### References:

1. DOR 6.050
2. Sections 36.380, 36.390, 36.410, 630.155, 630.165, 630.167, 630.168, 630.170, 660.250, RSMo.
3. 9CSR 10-5.200